

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Dever	Team: Team # 1	CCRB Case #: 200108071	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/05/2001 12:01 AM	Location of Incident: Crescent Avenue & Hill Street 24 Hour store	Precinct: 75	18 Mo. SOL 6/5/2003	EO SOL 6/5/2003	
Date/Time CV Reported Thu, 12/06/2001 5:50 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/17/2001 10:04 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Craig Wagner	17876	920949	PBBN SC
2. SGT Ischaler Grant	03725	897595	PBBN SC
3. DTS Carlos Cruz	06697	891416	PBBN SC
4. Officers			PBBN SC

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers stopped and questioned § 87(2)(b)	
B.SGT Ischaler Grant	Force: Sergeant Ischaler Grant used physical force against § 87(2)(b)	
C.POM Craig Wagner	Force: Police Officer Craig Wagner used physical force against § 87(2)(b)	
D.DTS Carlos Cruz	Force: Detective Carlos Cruz used physical force against § 87(2)(b)	
E.SGT Ischaler Grant	Abuse: Sergeant Ischaler Grant threatened § 87(2)(b) with the use of force.	
F.SGT Ischaler Grant	Discourtesy: Sergeant Ischaler Grant spoke obscenely and/or rudely to § 87(2)(b)	
G.SGT Ischaler Grant	Force: Sergeant Ischaler Grant struck § 87(2)(b) with a flashlight.	
H. Officers	Force: Officers pointed their guns at § 87(2)(b)	
I. Officers	Abuse: Officers frisked and searched § 87(2)(b)	

Synopsis

§ 87(2)(b) states that on 12-5-01 he was assaulted by police officers inside a store. He adds that they stopped and searched him for no reason and that a black Sergeant used discourteous language and struck him with a flashlight. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was interviewed by IAB investigators at his home on 12-7-01. He states that on 12-5-01, he was with his friend § 87(2)(b) bought a beer and exited a convenience store at the corner of Crescent and Hill Streets. Then § 87(2)(b) went back in the store to get another beer. § 87(2)(b) was buying a soda. Two plainclothes officers stopped § 87(2)(b) in front of the store. § 87(2)(b) walked towards the front with his hands in his pockets because he was getting his money out. The two officers then entered the store with guns drawn and ordered § 87(2)(b) to put his hands out and threatened to shoot him. § 87(2)(b) put his hands up and the officer rushed him. § 87(2)(b)'s hands went down and struggle ensued during which his arm was twisted. § 87(2)(b) pushed the officers away and was able to get to the front of the store. § 87(2)(b) was then slammed to the floor by a black Sergeant. § 87(2)(b) said that he knew he was a Sergeant because the officer had a gold shield. When the officers told him to put his hands behind his back, § 87(2)(b) complied. § 87(2)(b) was handcuffed and put on his knees. The Sergeant pushed a small flashlight into his face and threatened to put him in § 87(2)(b) Hospital. § 87(2)(b) states that his back hurts from the incident and adds that he has been hurt by police officers before.

§ 87(2)(b) was interviewed by the CCRB on 2-8-02. He states that three officers entered the store with guns drawn and told him to put his hands up. He complied and the officers then rushed him and threw him to the ground. He struggled with the officers for about four minutes, when a black Sergeant, later identified as Sergeant Grant, entered the store and slammed him to the floor. § 87(2)(b) did not repeat his allegation of being struck with the flashlight, but adds that he was told to "Shut the fuck up!" by Sergeant Grant. § 87(2)(b) was searched all over his body by the officers, who asked him where the gun was. The officers did not find anything. § 87(2)(b) was placed in a patrol car and issued a summons for disorderly conduct. One of the officers said "Now

you're going to pay for your ass whooping" when he received the summons. § 87(2)(b) also states that his friend § 87(2)(b) was slapped by one of the officers.

Witness Interview

§ 87(2)(b) is a § 87(2)(b). He was working in § 87(2)(b) during the incident.

§ 87(2)(b) was interviewed on 3-14-02. He states that he was standing at the back of the store, near the refrigerator. The officers were telling a young black man to put his hands behind his back, but he did not want to do it. Two officers had their guns pulled out. When the man entered the store, he had his hand in his pocket. The man went all the way to the back of the store and appeared to throw something inside the store. The officers searched the area and did not see anything. It took the officers some time to handcuff him because the man would not put his hands behind his back. In response to investigator's asking if any officer cursed at § 87(2)(b) stated that the black officer may have cursed at the man when they told him he was stupid to keep his hands in his pockets. § 87(2)(b) does not remember the words the black officer used. § 87(2)(b) did not see the man hit with a flashlight. The struggle lasted eight to ten minutes. The officers were trying to put the man's hand behind his back and the man was resisting. Things were knocked down inside the store during the struggle.

Results of Investigation

Police Officer Craig Wagner, Sergeant Ischaler Grant and Detective Carlos Cruz were assigned to the Brooklyn North Street Crime Unit. They were doing routine patrol within the confines of the 75th Precinct.

PO Craig Wagner was interviewed at the CCRB on 2-21-02. He states that on 12-5-01 he was working with Sergeant Grant and Detective Carlos Cruz. They pulled up to the corner of Hill and Crescent Streets, which is a location known for narcotics and gunpoint robberies. They observed two to three people in front of a store at the corner, including § 87(2)(b). They appeared to be involved in a drug transaction. The members of the group positioned their bodies to shield themselves from the street and then separated quickly when PO Wagner and his partners pulled up. PO Wagner was five to ten feet from the group when they pulled up to the corner. § 87(2)(b) ran into the store. All three officers got out and followed § 87(2)(b) into the store. § 87(2)(b) was at the back of the store, near the freezers. He was facing PO Wagner and his partners, with his arms behind him and down his pants. § 87(2)(b) appeared to be putting something down his pants. PO Wagner and his partners ordered him several times to remove his hands, but § 87(2)(b) did not respond. § 87(2)(b) began to walk towards them. PO Wagner then grabbed § 87(2)(b)'s arms and tried to get control of them. § 87(2)(b) resisted and a struggle ensued. Both § 87(2)(b) and PO Wagner fell to the

ground. Detective Cruz and Sergeant Grant assisted him. After about two minutes, they were able to handcuff § 87(2)(b). When they stood § 87(2)(b) up, PO Wagner smelled feces from his hands. § 87(2)(b) was never punched, kicked or struck with a flashlight. He was placed in a police car and issued a summons for disorderly conduct. PO Wagner does not recall if he had his gun drawn during the incident.

PO Wagner wrote a disorderly conduct summons due to § 87(2)(b)'s behavior, which acts in lieu of a UF250.

Sergeant Grant was interviewed at the CCRB on 3-6-02. He states that he has knowledge that § 87(2)(b) is involved in drugs and prostitution from people who live in the area and from seeing § 87(2)(b) in the area. When they approached the corner of Crescent and Hill Streets, a group of three or four individuals, including § 87(2)(b) appeared to be exchanging an object. Sergeant Grant did not see a specific object. The group quickly dispersed even before he and his partners pulled up to the corner. § 87(2)(b) and another individual went into the store. PO Wagner and Detective Cruz followed him into the store and Sergeant Grant stayed outside to speak to some of individuals who were outside the store. Sergeant Grant observed what occurred through the glass door of the store. § 87(2)(b) disregarded repeated orders from PO Wagner and Detective Cruz to take his hands out of his pockets. When they were unable to control § 87(2)(b) Sergeant Grant assisted them and they were able to handcuff him. § 87(2)(b) was daring them to break his arms and threatening to sue the police. § 87(2)(b) continued to struggle after he was handcuffed, so Sergeant Grant told him that was enough and that he was going to get hurt if he kept resisting. Sergeant Grant does not remember if he used profanity during the incident. § 87(2)(b) was never struck with a flashlight.

Detective Cruz was interviewed at the CCRB on 3-13-02. He states that when they pulled up to the corner of Crescent and Hill Streets, two members of the group in front of the store looked at them nervously and walked into the store, including § 87(2)(b). § 87(2)(b) had his hands in his pants and disobeyed their order to show his hands, so PO Wagner and Detective Cruz grabbed him by the arms. A struggle ensued and a stand inside the store was knocked over. When the man was handcuffed, his hands smelled like feces. Detective Cruz did not hear Sergeant Grant use any profanity during this incident. No officer drew his weapon during the incident.

Prior Bad Acts

§ 87(2)(b)
§ 87(2)(b)
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§ 87(2)(b)
§ 87(2)(b)

Sergeant Grant has twelve cases over eleven years on the force, none of which have been substantiated. Four of the cases, including this one, are still pending. PO

Wagner has four cases over four years on the force. One was exonerated, three are still pending. Detective Cruz has no prior CCRB cases.

Conclusions and Recommendations

§ 87(2)(g)

[REDACTED]

A. Abuse of Authority: Officers stopped and questioned

Several factors provided the subject officers with the reasonable suspicion necessary to pursue him into the store and inquire as to what he was doing. § 87(2)(b) was present in a drug prone area and was in a small group of individuals who were close together and appeared to be engaged in an exchange. Most importantly, § 87(2)(b) attempted to evade the officers when they arrived at the location. The observation of § 87(2)(b) was an example of vigilance on the behalf of the officers. Observations of furtive actions are key to uncovering criminal activity and often initiate arrest situations. In *PD v. Wang* (1998) an ALJ ruled:

“Even where an officer’s actions are found to be unconstitutional by subsequent adjudication, so long as the actions were undertaken by the officer in good faith and in furtherance of his general law enforcement responsibilities, they are not subject to disciplinary punishment...The wisdom of this policy is apparent, for to penalize officers for taking vigorous police action in situation where close legal choices must be made would be to paralyze a significant proportion of law enforcement efforts.”

§ 87(2)(g)

B-D. Force: Sergeant Ischaler Grant, Police Officer Craig Wagner and Detective Carlos Cruz used physical force against § 87(2)(b)

The force used by the officers was minimal in the face of § 87(2)(b)s repeatedly disobeying their orders to show his hands and resisting their efforts to take his hands out of his pants. § 87(2)(g)

§ 87(2)(b) (*PD v. McClernon*, 1997). Due to the fact that § 87(2)(b) continued to resist after verbal force was used and even after Sergeant Grant joined the struggle, the officers could have employed pepper spray against him.

§ 87(2)(b) never alleges being punched or kicked. § 87(2)(g)

E. Abuse of Authority: Sergeant Ischaler Grant threatened § 87(2)(b) with the use of force.

F. Discourtesy: Sergeant Ischaler Grant spoke obscenely and/or rudely to § 87(2)(b)

OATH precedents have established that officers may use discourteous language and threats of force in order to accomplish law enforcement related goals. In *PD v. Dukes and Conway* (2000), an ALJ ruled that an officer may not use profanity gratuitously, or to intimidate or retaliate against a civilian. § 87(2)(g)

d.

G. Force: Sergeant Ischaler Grant struck § 87(2)(b) with a flashlight.

§ 87(2)(g)

§ 87(2)(b) When the investigators pointed out that he had no injury on his face, he stated that the Sergeant only “pushed” the flashlight into his face. § 87(2)(b) never makes this allegation in his CCRB statement. This allegation is also not supported by

§ 87(2)(b) a civilian witness. § 87(2)(g)
§ 87(2)(b)

H. Force: Officers pointed their guns at § 87(2)(b)

The subject officers had a clear reason to fear for their personal safety, which they articulated in their interviews. *PD v. Gliner* (2000), an Administrative Law Judge ruled:

“The policy of the Department is that an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another’s personal safety. This policy permits officers to discourage or terminate the attempted use of deadly force against themselves by providing them with a less dramatic alternative to the actual use of a firearm. Thus, the Department permits an officer broad discretion to display his weapon whenever he feels that his life or the life of another is endangered...In discussing the standards by which courts should assess a police officer’s resort to proactive action during a criminal stop, the Appellate Division noted that such an assessment should not be based ‘upon some abstract or illusory notion of what police-citizen encounters ought to be like in an ideal world but upon an objective evaluation of the encounter as it occurred’”

§ 87(2)(g)
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I. Abuse of Authority: Officers frisked and searched § 87(2)(b)

§ 87(2)(b)s stuffing his hands down his pants, disobeying repeated verbal commands and resisting their efforts to control him further increased their level of suspicion and gave them probable cause to search § 87(2)(b) for their own safety. It is

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: